

ORDINANCE NO: 2010-12-11-10

AN ORDINANCE REGULATING SMOKING WITHIN HENRY COUNTY, INDIANA

WHEREAS, it has been determined that smoking tobacco is a major cause of cancer, lung disease, and adversely impacts an individual's health. It has further been established that secondhand smoke resulting from the use of tobacco products has a demonstrated adverse impact on human health; and,

WHEREAS, it is within the authority of the government of Henry County to protect the public health, safety and welfare; and,

WHEREAS, I.C. 16-41-37-9 expressly provides that a county may adopt an ordinance restricting the use of tobacco products.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF HENRY COUNTY, INDIANA that the following regulations exist regarding the use of tobacco products within the county:

SECTION 1: DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. A portion of an establishment where a person can purchase and consume alcoholic beverages, including but not limited to, taverns, night clubs and cocktail lounges.

ENCLOSED AREA. All space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

HEALTH CARE FACILITY. An office or institution providing care or treatment of diseases, whether physical, mental, emotional or other medical, physiological or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists, within these professions. The term "Health Care Facility" shall include all waiting rooms, hallways, private rooms, semi private rooms, and wards within health care facilities.

MEMBERSHIP CLUB. A facility owned or operated by an association or corporation, which shall:

- (1) Not be operated for pecuniary gain; and
- (2) Registered under Indiana law; and
- (3) Determined by the Internal Revenue Service to be operating under not-for-profit status; and
- (4) Consist of a membership:
 - (a) Formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or
 - (b) Comprised of persons who have served in the armed forces of the United States; or
 - (c) Formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self-governance by the membership are distinguishing characteristics, and where entry into, and use of the facility is restricted to members and guests of members.

OFFICE. A building, structure or area used by the general public or serving as a place of work at which principal activities consist of professional, clerical or administrative services. An OFFICE includes, but is not limited to, professional offices, offices in financial institutions, business offices, telemarketing offices and governmental offices.

OTHER PERSON IN CHARGE. The agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within a place of work and public place at any given time.

PERSON. Any municipal corporation, individual, firm, partnership, association, corporation, company or organization of any kind.

PLACE OF WORK/EMPLOYMENT. Any enclosed, indoor location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to, an employment relationship with or for a private corporation, partnership, individual, municipal corporation or government agency. This term includes any location where two or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a "place of work" include enclosed, indoor areas of an office, a public conveyance, a factory, a warehouse, a hotel or motel, and other locations where services are performed under an employment relationship. Enclosed, indoor areas of

private clubs, and rooms used for private meetings or social functions are "places of work," if two or more persons acting under an employment relationship provide cleaning, catering, food or beverage service, maintenance or other support services at the location.

PROPRIETOR. The party, regardless of whether the party is the owner or lessee of the place of work or public place, who ultimately controls, governs or directs the activities within the place of work or public place. The term PROPRIETOR may apply to a corporation as well as to an individual.

PUBLIC PLACE. Any enclosed, indoor area used by the general public or serving as a place of work, including but not limited to, bars, restaurants, retail stores, offices and other commercial establishments, public conveyances, auditoriums, arenas, meeting rooms, common areas of rental apartment buildings, educational facilities other than public schools, sports arenas, theaters, shopping malls, banks, laundromats, barber and beauty shops, retail food production locations, marketing establishments and health care facilities.

RESTAURANT. Any establishment used as, or held out to, the public as having food available for payment to be consumed on the premises, including coffee shops, diners, cafeterias, cafes, luncheonettes, sandwich stands and soda fountains. The term RESTAURANT shall include a bar area within the restaurant and the restaurant area of a membership club if it serves the general public and not just its members and guests.

SHOPPING MALL. An enclosed public walkway or hall area that serves to connect retail or professional establishments.

SMOKING. The inhaling, exhaling, combustion, and/or lighting of any cigarette, cigar, pipe or any other lighted smoking equipment. SMOKING includes carrying a lighted cigarette, cigar, pipe or any other lighted and/or smoldering smoking equipment.

SPORTS ARENA. Any sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

THEATER. Any enclosed facility, open to the public, which is primarily used for or designated for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

SECTION 2: SMOKING PROHIBITED.

- (A) Except as provided in division (C), no person shall smoke in public places and/or places of work/employment, in addition to, but not limited to, the following:
- (1) Aquariums, galleries, libraries and museums.
 - (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels.
 - (3) Bars, except as provided in subsection (C).
 - (4) Buildings and grounds owned by the county or any department, agency or subdivision thereof.
 - (5) Convention facilities.
 - (6) Elevators.
 - (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance, including an outdoor movie theater.
 - (8) Health care facilities.
 - (9) Licensed childcare and adult day care facilities.
 - (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (11) Polling places.
 - (12) Public transportation facilities, including buses and taxicabs, under the authority of the county, and ticket, boarding and waiting areas of public transit depots.
 - (13) Restaurants.
 - (14) Restrooms, lobbies, reception areas, hallways and other common-use areas.
 - (15) Retail stores of whatever nature.

- (16) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the county or a political subdivision of the state, when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the county.
 - (17) Schools.
 - (18) Services lines.
 - (19) Shopping malls.
 - (20) Sports arenas, including enclosed places in outdoor arenas.
 - (21) Sleeping rooms of hotels and motels rented to guests.
 - (22) Bingo facilities, except as provided in subsection (C).
- (B) To ensure that tobacco smoke does not enter public places and places of work/employment and that persons entering such places are not exposed involuntarily to tobacco smoke, smoking is prohibited within 25 feet of entrances, exits, open windows and ventilation intakes of public places and places of work/employment.
- (C) The prohibitions of this section do not apply to:
- (1) Private residences, except when used as a licensed day care, adult day care or health care facility.
 - (2) Motor vehicles.
 - (3) Outdoor dining areas of restaurants that have no direct exit from the premises and where the nearest seating is at least ten feet from the entrance to the smoke-free area.
 - (4) Any bar that:
 - a. Holds a beer, liquor, or wine retailer's permit under the laws of this state;
 - b. Allows no customers to enter at any time who is under the age of eighteen (18);
 - c. Employs no person under the age of eighteen (18);
 - d. Is not physically located within a business otherwise required to be smoke free by this ordinance;

- (5) Membership Clubs, provided that if a membership club claims that it is exempt from this ordinance, that it provides the appropriate documents to the officials requesting said documents within three (3) days of said request. This exemption shall not apply to those areas of the membership club that serves as a restaurant or bar that serves the general public, in addition to its members and guests, unless said membership club complies with Section 2(C) (4) above.
- (6) Bingo facilities, provided that no one under eighteen (18) years of age is permitted to work, attend, or be at or in the Bingo facility.

SECTION 3: RESPONSIBILITIES OF PROPRIETORS.

- (A) Notwithstanding any other provision of this subchapter, an owner, operator, manager, proprietor or other person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place by placing a sign conforming with the requirements of Section 4 below.
- (B) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited, except that there may be a device to dispose of smoking materials located directly outside of the entrances.
- (C) Ask any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave and use any other means that may be appropriate to obtain compliance.
- (D) Notwithstanding the above, an employer, owner or operator may designate a smoking area not less than 25 feet from any entrance.

SECTION 4: POSTING OF SIGNS.

Every public place and place of work/employment where smoking is prohibited by this subchapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Any establishment exempted from this ordinance under Section 2(C) (3) (4) (5) and (6) shall clearly and conspicuously post the following sign at every entrance "This is a Smoking Establishment."

SECTION 5: RETALIATION PROHIBITED.

No person or employer shall discharge, refuse to hire, penalize, discriminate against or in any manner retaliate against any employee, applicant for employment or customer because the employee, applicant

or customer exercises any right to a smoke-free environment provided by this subchapter or other law.

SECTION 6: OTHER APPLICABLE LAWS.

This subchapter shall not be interpreted to permit smoking where it is otherwise restricted by other applicable laws or to supersede any local laws that are more restrictive.

SECTION 7: SMOKING REGULATIONS TO BE BROADLY INTERPRETED.

This subchapter shall be construed broadly to effectuate the purposes described in the preamble of this Ordinance and any amendments thereto.

SECTION 8: SEVERABILITY.

If any section, sentence or provision of this subchapter, or the application thereof to any person or circumstances shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this subchapter that can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are declared to be severable.

SECTION 9: ENFORCEMENT.

- (A) This subchapter shall be enforced by the County Health Department, or any law enforcement agency.
- (B) Any citizen who desires to register a complaint under this subchapter may initiate enforcement with the County Health Department.
- (C) The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this subchapter.
- (D) An owner, manager, operator or employee of an establishment regulated by this subchapter shall inform persons violating this subchapter of the appropriate provisions thereof.

SECTION 10: VIOLATIONS AND PENALTIES.

- (A) A person who smokes in an area where smoking is prohibited by the provisions of this subchapter shall be guilty of an infraction, punishable by a fine not exceeding \$50.
- (B) A person who owns, manages, operates or otherwise controls a public place or place of work/employment and who fails to comply with the provisions of this ordinance or any

amendment thereto, shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding \$100 for a first violation.
 - (2) A fine not exceeding \$200 for a second violation within one year.
 - (3) A fine not exceeding \$500 for each additional violation within one year.
- (C) Each day on which a violation of this subchapter occurs shall be considered a separate and distinct violation.

This ordinance shall become effective on January 11, 2011 after passage by the Board of Commissioners of Henry County and publication pursuant to Indiana Law.

Adopted by the Board of Henry County Commissioners by a vote of 3 in favor and 0 against THIS 10th DAY OF November, 2010.

HENRY COUNTY COMMISSIONERS



Kim L. Cronk, President

William D. Cronk, Vice President

Samuel R. Beckenbaugh, Member

ATTESTED BY:



Linda S. Ratcliff, Auditor